



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings

x

- against -

FINAL

Police Officer Jamel Dennis

ORDER

Tax Registry No. 933739

OF

Manhattan Court Section

DISMISSAL

x

Police Officer Jamel Dennis, Tax Registry No. 933739, Shield No. 26276, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2009-57, as set forth on form P.D. 468-121, dated December 9, 2008, and after a review of the entire record, has been found Guilty of Specifications 2 through 5.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Jamel Dennis from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On June 4, 2012 at 0001HRS.

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

February 27, 2012

In the Matter of the Charges and Specifications : Case No.2009-57

- against - :

Police Officer Jamel Dennis :

Tax Registry No. 933739 :

Manhattan Court Section :

At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable Martin G. Karopkin
 Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Rita Bieniewicz, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Paul Martin, Esq.
 Preston, Wilkins, Martin & Rodriguez, PLLC
 65 Broadway Suite 508
 New York, New York 10006

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10030

The above-named member of the Department appeared before me on January 19, 2012, charged with the following:

1. Said Police Officer Jamel Dennis, while assigned to Narcotics Borough Brooklyn North and off-duty, on or about November 17, 2008, at a location known to this Department, in Queens County, with intent to cause serious physical injury to another person, did cause such injury to such person.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. Penal Law § 120.05 (1) - ASSAULT IN THE SECOND DEGREE

2. Said Police Officer Jamel Dennis, while assigned to Narcotics Borough Brooklyn North and off-duty, on or about November 17, 2008, at a location known to this Department, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer was involved in a physical altercation with an individual known to this Department and did cause injury to that person.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

3. Said Police Officer Jamel Dennis, while assigned to Narcotics Borough Brooklyn North and off-duty, on or about November 17, 2008, at a location known to this Department, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer having been involved in a police incident failed to remain at the scene and failed to notify the Department.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Police Officer Jamel Dennis, while assigned to Narcotics Borough Brooklyn North and off-duty, on or about November 17, 2008, at a location known to this Department, in Queens County, with intent to cause physical injury to another person, did cause such injury to such person. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
N.Y.S. Penal Law § 120.00 (1) - ASSAULT IN THE THIRD DEGREE

5. Said Police Officer Jamel Dennis, while assigned to Narcotics Borough Brooklyn North and off-duty, on or about November 17, 2008, at a location known to this Department, in Queens County, recklessly engaged in conduct which created a substantial risk of serious physical injury to another person, identity known to the Department. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
N.Y.S. Penal Law § 120.00 - RECKLESS ENDANGERMENT IN THE
SECOND DEGREE

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and Respondent was represented by Paul Martin, Esq.

Respondent has entered a plea of Guilty to the operative charges and has testified in mitigation with regard to penalty. A stenographic transcript of the record has been prepared and is available for the Police Commissioner's review.

DECISION

Specification No. 1 was dismissed by the Department. Respondent, having pleaded Guilty to the remaining specifications, is found Guilty of those specifications.

INTRODUCTION

Respondent was arrested and charged criminally with regard to the incident that occurred on November 17, 2008. After a bench trial before the Hon. Jeffrey D. Lebowitz in Queens County Supreme Court in January 2011, Respondent was convicted of two misdemeanors; assault in the third degree and reckless endangerment in the second degree. He was sentenced to three years of probation and he was required to perform 100 hours of community service [see Department's Exhibit (DX) 1, certificate of disposition].

The overall facts of the case are not in dispute. Geoffrey Hollinden¹ was a pedestrian while Respondent was driving his car. Both were in the vicinity of Queens Boulevard and Austin Street. They had some kind of interaction and Hollinden slammed Respondent's vehicle with his fist causing some damage. Hollinden walked away heading across Queens Boulevard. Respondent got out of his car and followed him. He

¹ Hollinden testified that this is the correct spelling of his surname although it was transcribed otherwise.

caught up with Hollinden and, as can be seen on the video (DX 3)², bodily returned him to an area away from the main roadway. There was an angry verbal exchange during which Hollinden, according to Respondent, used vulgar language. Respondent, who is quite tall, picked Hollinden up, turned him upside down and dropped him. Respondent turned around and went back to his car where his girlfriend was, according to Respondent, yelling. He did not look back at Hollinden who was on the ground, bleeding and vomiting.

The assault conviction related to the dropping of Hollinden, while the reckless endangerment resulted from the fact that Hollinden was left in a zebra-striped area of the street close to the traffic lane, (from the video this appears to be a service road on Queens Boulevard).

Respondent did not immediately report the matter but instead went to the 112 Precinct the next day. There he spoke to Detective Kiernan O'Halloran. He identified himself to O'Halloran and indicated that he was a member of service. Respondent inquired if there had been a road rage type of incident on Queens Boulevard in the vicinity of 72 Street. He told O'Halloran that he had been in a dispute with a man he had had a shouting match with. Respondent left contact information with O'Halloran.

O'Halloran later learned of an assault the previous day at that location. He went to speak to the victim, Hollinden, who was then in the intensive care unit of Mary Immaculate Hospital. Respondent was subsequently arrested.

The injuries to Hollinden are best summed up by Justice Lebowitz who noted in his verdict that:

² Several video clips from nearby surveillance cameras are in evidence.

...I do find that the evidence established that as a consequence of his [Respondent's] actions the complainant [Hollinden] suffered serious physical injury. He was hospitalized for three days, diagnosed with intracranial hematoma, had periods of unconsciousness, had back pain for three weeks, headaches for two to three months, pain from the wound, he said, for up to six months and to continue—and continues to complain of pain, stiffness, tingling and numbness to this day on his right shoulder, right neck area and right arm.

He also indicates that he has continued discomfort, has affected his ability to sleep on his right side. He also displayed to the Court a small red scarring in his scapula area where the hematoma occurred.

The fact that he may have suffered from a pre-existing herniation is of no moment as none of the latter symptoms occurred before the event in question; therefore, notwithstanding the finding of – with regard to the intent, I do find that this complainant did suffer serious physical injury... [DX 2, Trial transcript, pages 297 298].

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that he is 36 years old and that he grew up in the Rosedale section of Queens. He attended August Martin High School and went to Fairleigh Dickenson University in New Jersey for a year and a half. He then joined the Marines.

While serving in the Marines, Respondent was stationed in Japan and then North Carolina. He was then assigned aboard a ship. Respondent was involved in the peacekeeping effort in Kosovo and received an expeditionary medal for his service there. He served in the Marines for eight years and was honorably discharged in the rank of sergeant, E5.

After his discharge, Respondent worked at JBI Capitol as a stockbroker. He earned Series 7 and Series 63 licenses. He was appointed to this Department on January 20, 2004.

He began his career in the 115 Precinct, then he worked in a plainclothes detail at Shea Stadium. He then went to Borough Crime in Queens and then to Brooklyn North Narcotics, which is where he was assigned when this incident occurred. He has never been the subject of either formal or command discipline outside of this incident. He was exonerated in the one complaint filed against him with the Civilian Complaint Review Board.

On November 17, 2008, at about 3:30 p.m., he was in Queens coming from Austin Street headed towards Queens Boulevard. He went to make a right turn when he heard a loud thump. He looked behind him and saw Hollinden. He wanted to pull over but the traffic was heavy at that point. He went down the street and examined his car. He discovered a large dent. When he tried to approach him, Hollinden "took off" across the street. "He totally changed direction," Respondent explained.

Respondent stated that he went across the street to talk to Hollinden and Hollinden confronted him with "a bunch of profanity." Hollinden told Respondent to get the "fuck" out of his face. Respondent stated that he told Hollinden that he was to stay there while he called the police because he had put a dent in his car. Hollinden then started to walk off again. At this time, they were on the sidewalk, in the median, in the middle section of Queens Boulevard. When Hollinden walked off, Respondent followed him. He said that he spun Hollinden around with his left hand. Respondent stated, "He immediately tried to swing, like get off me type of swing toward my face."

Respondent said that that was when he grabbed Hollinden by the jacket and brought him back to the median. "He's squirming. I picked him up. As he is squirming, I can't hold the guy. So I just dropped him. I can't hold a grown man like that. He is squirming, kicking, flailing his arms." Respondent denied throwing him but admits he "dropped" him.

After he dropped Hollinden, he saw that his girlfriend, who was still in the car, was screaming and upset. He went to her and remembered seeing some pedestrians. He remembered telling them that he was sorry that they had to see that. These were the same people who testified at his criminal trial.

When he got back to the car, he took his girlfriend home. Subsequently, he went to the 112 Precinct where he spoke to a detective, who later testified at his criminal trial. He identified himself to the detective and said he had been involved in an incident and asked that he be notified "if anything came up." He said he told the detective where he worked and what his "shift" was.

Describing his intent at the time he dropped Hollinden, Respondent said that he just could not hold him anymore. His initial intent, he said, was to hold Hollinden until the police came. He had hoped to settle the damage issue out-of-pocket.

Respondent stated that he did not know of Hollinden's injury because he did not look at him. "I am not there to hurt him or kick him when he is down or anything like that. I am not that type of person," Respondent testified.

He said he did not remain at the scene because his girlfriend was upset and he took her home.

On cross-examination, Respondent re-asserted that he did not "throw" Hollinden to the ground. He acknowledged that, at his official Department interview, he had said that he had thrown Hollinden to the ground but said the statement was being interpreted in a different way. Respondent acknowledged that once he released Hollinden he did not turn around or administer a blow. He said he pretty much walked straight away to his car. He did not believe that Hollinden landed on his feet but he did not think he landed on his head "or anything like that."

Respondent walked directly to his car which was approximately 20 feet away. He did not turn around. He did not know what time he got his girlfriend home nor did he know what time he went to the 112 Precinct.

Respondent [REDACTED] is aware that the part of Queens Boulevard near Austin Street is busy. He first became aware that Hollinden went to the hospital when he was put in a lineup by the Internal Affairs Bureau.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to Specification Nos. 2, 3, 4 and 5. Specification No. 1, which charged Respondent with the felony of assault in the second degree was dismissed by the Department. This matches what occurred at the criminal trial where the

judge who presided over a bench trial found that Respondent did not act with intent to cause serious physical injury but did act with intent to cause physical injury. Respondent was convicted criminally of assault in the third degree and reckless endangerment in the second degree.

Respondent made much of that fact that he did not "throw" Hollinden but "dropped" him. This is a distinction without real difference in this case. Respondent picked Hollinden up off the ground and turned him upside down. He did not ease Hollinden back to the ground gently and, whether he dropped him or threw him, Respondent's conduct resulted in serious injury to Hollinden.

The Department has recommended that Respondent be dismissed from his position as a police officer. Respondent has argued that Department case law does not support a dismissal for assault and has cited numerous cases in which officers who committed assaults were given a penalty less than termination and were allowed to continue their service in the Department.

Looking at records of prior Department disciplinary cases presents a more complex picture. There have indeed been numerous cases in which officers found guilty of assault in Department disciplinary proceedings have been subject to punishment less than termination. But there also have been a number of cases where officers have been terminated or have been separated from the Department by agreeing, as part of their penalty, to submit their retirement papers.

In considering the issue of penalty in this case this Court has reviewed the summaries of approximately 55 cases recorded between 1997 and the present. Approximately 45 of these were submitted by Respondent and the others found from the

Court's own research. Because the facts of each case are unique and because the circumstances so varied, no hard and fast rule emerges as to when an officer will be terminated for an assault. Several factors that have been considered do emerge.

The first of these is whether or not there was a criminal conviction. It should be noted in this regard that in this Department many disciplinary actions for assault are initiated where no criminal charges have been brought or where criminal charges were brought but were disposed of with non-criminal pleas or dismissal. Indeed, because of the different and lower level of proof required in this forum, disciplinary charges have been brought where a member of the service has been tried and acquitted in a criminal forum.

Looking at the compilation of assault cases, the outstanding fact is that there are very few cases involving criminal convictions. In those cases officers were not automatically separated from the Department.

In Disciplinary Case Nos. 76551/00, 77402/01, 77403/01 & 77404/01, signed December 22, 2003, an eight-year member who had been convicted of attempted assault forfeited 90 suspension days and served a one year period of dismissal probation. In Disciplinary Case No. 85877/09, signed February 1, 2011, an eight-year member of the Department who had pled guilty to assault in the third degree in criminal court forfeited 29 vacation days and 32 suspension days and was placed on dismissal probation. He also was required to submit to periodic breath testing and was required to cooperate with counseling. In Disciplinary case 76650/01, signed April 24, 2003, a five year member of the service with no prior disciplinary record forfeited 90 days on suspension and was

placed on one-year dismissal probation. The Departmental disciplinary action included a finding that he was unfit for duty indicating that this case was alcohol-related.

On the other hand, in a 23 year detective with no prior disciplinary record, who pled guilty to assault in the third degree in Suffolk County, negotiated a penalty involving the loss of 15 vacation days, 30 suspension day, dismissal probation and service retirement. In this case, the officer had used his shield to gain entry into a residence where he believed his daughter was at a slumber party. He pistol-whipped the homeowner and dragged two individuals out of bed with a gun in his hand. He punched his daughter's boyfriend while stating, "You're either going to die or go to jail." The boyfriend suffered lacerations to his head. (Disciplinary Case No. 84856/09, signed November 4, 2010). Additionally, in Disciplinary Case No. 68582/94 and 68696/94, signed February 4, 1997, a sergeant who had pled guilty in criminal court to assault in the third degree was dismissed from the Department. The hearing officer in that case noted the viciousness of the assault in making the recommendation.

Clearly, the fact that a member of the service was convicted of a misdemeanor assault has not been automatically dispositive on the issue of whether the member would be allowed to remain with the Department. But the lack of a criminal conviction did not guarantee that an officer would be able to remain with the Department. Thus, a nine-year member who was acquitted in criminal court and who was rated "highly competent to extremely competent" on his recent evaluations and who had no prior disciplinary action was dismissed from the Department for engaging in an off-duty assault on a civilian causing serious physical injury. That member was found guilty at the administrative trial

of slamming the victim's head on the floor and punching him in the face causing serious physical injury (Disciplinary Case No. 72895/98, signed August 10, 2000).

In the end, each case requires its own evaluation. In this case, there are some troubling circumstances. The most significant aggravating factors are the sheer brutality of the assault and the manner in which it erupted from a minor provocation. The injuries which Respondent caused to Hollinden are substantial and go well beyond the bruising, cuts and scratches which are found in most of the cases where officers have been allowed to remain on the job.

Additionally, there are two criminal convictions, one for assault and one for reckless endangerment. While these crimes both stem from the same overall incident, they reflect two separate criminal acts. Moreover, each of these acts bear directly on Respondent's character and fitness to serve as a police officer.

With regard to the assault, the kind of provocation Respondent reacted so poorly to with Hollinden was no greater than the kind of provocation he might face in his duties with this Department. This fact raises concerns that he might similarly overreact while on duty. As a result, his continued employment as a police officer might pose a safety risk to the public.

Respondent's second criminal conviction is for reckless endangerment. Police officers are responsible for public safety. They are police officers at all times, certainly this is so within the confines of New York City. Not only did Respondent fail to address Hollinden's medical condition by calling for an ambulance, but he failed take action to protect him from cars travelling on the nearby roadway. Indeed, leaving Hollinden on the street in proximity to moving cars was the basis for the reckless endangerment

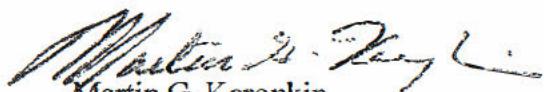
conviction. Respondent's failure to call for an ambulance and to call for a police response was a professional failing.

It should be noted in this regard that as can be seen on the video and acknowledged in Respondent's testimony, he never even looked back to see what Hollinden's situation was. There was testimony at the criminal trial that Hollinden was vomiting and bleeding. Respondent's conduct, this sheer indifference, is completely at odds with a police officer's responsibility to protect and serve the public.

Even if Hollinden was not laying in the street, Respondent, as a member of this Department had a responsibility to remain on the scene, which he did not do. Respondent also failed to properly and promptly notify this Department of his involvement in this incident, also something required of members of this Department.

For all of these reasons, this Court has no alternative but to recommend that Respondent be DISMISSED from the Department.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials



POLICE DEPARTMENT
CITY OF NEW YORK

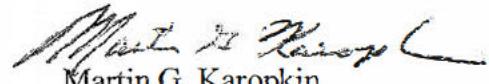
From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JAMEL DENNIS
TAX REGISTRY NO. 933739
DISCIPLINARY CASE NO. 2009-57

Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his last three annual performance evaluations. In his eight years of service, [REDACTED]

He

[REDACTED] Category A in 2010 and as Category B in 2010 and 2011. Respondent has no prior disciplinary record. Based on his overall record, he was placed on Level II Discipline Monitoring in May 2009.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials